



MEMO ENDORSED

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April 15, 2020

ECF FILING

Honorable Valerie Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, N.Y. 10007

USDC SDNY
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Re: Chevrestt v. Barstool Sports Inc. - No. 20-cv-1949 (VEC) (SN)

Dear Judge Caproni:

On March 5, 2020, this Court issued an order requiring Plaintiff to file a proof of service and produce documents relating to royalties generated by the images at issue in this copyright dispute by specified deadlines (the “Order”). Plaintiff’s counsel, Richard Liebowitz, did neither.

On April 13, Defendant submitted a letter notifying the Court about Mr. Liebowitz’s failures to comply with the Order and requesting that the Court issue any remedy that it deemed appropriate.

In response, Mr. Liebowitz submitted a letter attempting to shift blame to *Defendant* for his failure to timely produce the documents. Without acknowledging the Order or his non-compliance, Mr. Liebowitz asserted that Defendant violated Your Honor’s Individual Practices by failing to meet and confer about his failure to produce documents in connection with what he termed a “discovery dispute.”

Mr. Liebowitz’s failure to timely produce documents did not, of course, relate to any “discovery dispute,” but instead his non-compliance with Your Honor’s Order. It is not our job to remind Mr. Liebowitz to comply with court orders. Nor were we obligated to seek leave before advising the Court of Mr. Liebowitz’s failure to comply with the Order.

Mr. Liebowitz’s attempt to invoke the COVID-19 pandemic is disingenuous: He has continued to file multiple new infringement cases during the pandemic and appears to be actively litigating them when it suits him.

With respect to the so-called “licensing fee information” Mr. Liebowitz claims to have “now disclosed,” at 9:19 PM last night he emailed me one document (copy enclosed) with no explanation whatsoever. This document appears to be a single invoice from his client to the NY Post dated Jan. 26, 2015, which lists four unspecified “assignments” on Jan. 21, 22, 23 and 24 in Manhattan and Queens. There is no reference to license fees as such.



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This belated “production” with no explanation does not comply with the Court’s directive for Plaintiff to produce “copies of records sufficient to show the royalty paid the last three times the picture that is at issue in this case was licensed, as well as the number of times the picture was licensed in the last five years; if the picture at issue has never been licensed, Plaintiff must expressly certify that fact to Defendant(s) as part of Plaintiff’s production.”

We again respectfully defer to Your Honor on the appropriate relief.

Respectfully submitted,

A handwritten signature in black ink that appears to read "Barry Werbin".

Barry Werbin

cc: Richard Liebowitz, Esq. (ECF)

No later than **April 22, 2020**, Mr. Liebowitz is ordered to show cause why he should not be sanctioned pursuant to Fed. R. Civ. P. 16(f) for failure to comply with the Court's March 5, 2020 Order. The Court concurs with Defendant that the single document produced on April 14, 2020 does not comply with the Court's order.

SO ORDERED.

A handwritten signature in blue ink that appears to read "Valerie Caproni".

4/15/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE